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Dec. 14

Mr. J. H. Johnson, Assistant Commissioner  
Department of Public Works & Highways  
State House Annex

Dear Harold:

You have inquired whether a town may legally raise and appropriate funds to pay the difference in cost between that of surface treatment proposed by the Department of Public Works & Highways and that of a more expensive treatment desired by the town, upon a portion of a primary highway; and whether the Department may accept such a contribution from a town. In my opinion, both questions must be answered in the negative.

"The state highway department shall assume full control and pay the costs of construction, reconstruction and maintenance of all class I highways, including bridges thereon."  
R. L. c. 90, Part 2, s. 1.

If the department were to accept from a town a contribution of part of the cost of the work, in consideration of a change in the specifications, such an arrangement would modify, in a sense, both requirements of the section quoted. The department would be surrendering control of selection of the surface treatment to be employed, and would be paying less than the cost of the work. I can find no provision of law authorizing the department to accept a contribution for this purpose, and, in the absence of such provision, I believe such acceptance would be unlawful.

Nor does it appear clear that a town may lawfully raise and appropriate funds for such a purpose. "Towns may at any legal meeting grant and vote such sums of money as they shall judge necessary . . . . to . . . . build and repair highways . . . ." R. L. c. 51, s. 4, III. "Each town shall, at each annual meeting, raise and appropriate for the repair of highways and bridges within such town a sum not less than . . . . ; and in addition thereto may raise as much more as it may deem necessary; . . . ." R. L. c. 90, Part 16, s. 1. "The money so raised and collected shall be expended in repairing class IV and class V highways by the agents elected or

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appointed for the purpose, under the direction of the selectmen." Id. s. 3. While these sections do not limit the amount which may be raised and appropriated by towns for repair of highways, they do limit the use of the funds to class IV and class V highways, and require their expenditure by the agents, under the direction of the selectmen.

I recognize the possibility that a town through which runs a primary highway may experience an increase in its population to twenty-five hundred or more, as a result of which the primary highway in the compact part of the town will become a class IV highway which the town must maintain. Nevertheless, the statute appears to contemplate that the responsibility and the expense shall not be in any way apportioned, but shall be borne entirely either by the department or by the town.

In my opinion, therefore, the town may not legally raise and appropriate funds for a project of this nature, and the department may not legally accept such a contribution.

Very truly yours,

Maurice M. Blodgett  
Deputy Attorney General

MMB:RM